UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DANIEL MANCINI,

Plaintiff,

v.

CITY OF CLOVERDALE POLICE DEPARTMENT, et al.,

Defendants.

Case No. 15-cv-02804-JSC

ORDER REVIEWING SECOND AMENDED COMPLAINT UNDER SECTION 1915 AND ORDERING SERVICE BY THE MARSHAL

Re: Dkt. No. 14

Plaintiff Daniel Mancini, proceeding *in forma pauperis*, filed the instant Second Amended Complaint ("SAC") against the City of Cloverdale Police Department, retired Cloverdale Police Chief Mark Tuma and Retired Sergeant Keith King, and current Cloverdale Police Officers Michael Campbell and Officer Rose, as well as individuals Kenneth Roux, Adam Elbeck, and a number of Does. (Dkt. No. 14.) The SAC arises out of Roux and Elbeck's false accusations that Plaintiff burglarized Roux's Body Shop, and Plaintiff's request that the Cloverdale Police Department press charges against Roux and Elbeck after they violently attacked him. Plaintiff alleges that Roux and Elbeck are liable for negligence, false imprisonment, and assault and battery. Plaintiff also alleges that Chief Tuma, Sergeant King, and Officers Campbell and Rose violated his civil rights and conspired to violate his civil rights, and that the City of Cloverdale is subject to municipal liability for those violations. Upon the review required by 28 U.S.C. § 1915(e)(2), the Court twice previously dismissed Plaintiff's complaint with leave to amend, finding that the federal counts failed to state a claim upon which relief could be granted, such that there was no basis for federal jurisdiction over the state law claims. *See Mancini v. City of Cloverdale Police Dep't*, No. 15-cv-02804-JSC, 2015 WL 4512274, at *4-6 (N.D. Cal. July 24, 2015) ("*Mancini II*"); *Mancini v. City of Cloverdale Police Dep't*, No. 15-cv-02804-JSC, 2015

WL 3993216, at *4-5 (N.D. Cal. June 30, 2015) ("*Mancini I*").

DISCUSSION

The factual background of this case is detailed in the Court's Orders reviewing the complaint and FAC under Section 1915, which the Court incorporates here in full. *Mancini II*, 2015 WL 4512274, at *1-2; *Mancini I*, 2015 WL 3993216, at *1-2. As the factual allegations have not changed, the Court will not reiterate the factual background here. Suffice it to say that the claims arise out of an alleged corrupt agreement and cover up among officers at the Cloverdale Police Department to protect Plaintiff's attackers from prosecution. The Court twice previously noted that Plaintiff has stated a claim for at least some of his common law counts (now Counts Six through Eight) against Roux and Elbeck, and therefore the claims against these individual defendants pass muster under Section 1915 and could proceed to service. The initial complaint and FAC failed to state a claim for any of the federal civil rights causes of action contained therein. For the reasons discussed below, Plaintiff has cured the defects the Court discussed for at least some of the federal claims such that the SAC may proceed to service.

I. Count One: Deprivation of Civil Rights under Section 1983

Plaintiff's Section 1983 claim alleges that Chief Tuma, Sergeant King, and Officers Campbell and Rose violated Plaintiff's Fourteenth Amendment rights to due process and equal protection under the law by failing to bring charges against Roux and Elbeck, to protect witnesses, to provide a police report to Plaintiff, or to discipline the involved officers all with the intent to cover up the police investigation and prevent Plaintiff from bringing suit. (*See* Dkt. No. 14 ¶¶ 78, 81.) The Court previously dismissed the due process claim on the ground that the FAC did not allege facts supporting a concurrent equal protection violation as required, and that the equal protection violation failed because the FAC did allege facts giving rise to a plausible claim of class-of-one discrimination. *Mancini II*, 2015 WL 4512274, at *4-5. The Court noted that the Ninth Circuit has not yet weighed in on whether a plaintiff can use class-of-one equal protection theory in the law enforcement failure-to-investigate or failure-to-prosecute context even in the presence of personal animus. *Id.* (citing *Le Fay v. Le Fay*, No. 1:13-cv-1362 AWI MJS, 2015 WL 106262, at *6 (E.D. Cal. Jan. 7, 2015); *Williams v. Cnty. of Alameda*, 26 F. Supp. 2d 925, 941

(N.D. Cal. 2014)). But in any event, the Court noted that while Plaintiff included allegations about the officers' irrational motives towards Plaintiff, Plaintiff nonetheless failed to plead a class-of-one discrimination claim because there were no "allegations explaining to whom Plaintiff was similarly situated." *Id.* at *5.

In the SAC, Plaintiff now provides even more detail regarding the officers' irrational motives, alleging that the officers intentionally treated Plaintiff different from others due to "nepotism and corruption" given their "long-standing friendship and business relationship with Roux" and because the officers had personal animus towards Plaintiff and thought he was a "loser." (Dkt. No. 14 ¶¶ 69, 75.) What is more, Plaintiff now alleges that he "was treated intentionally differently from all other similarly situated citizens, including other Cloverdale and Sonoma County citizens who were victims of similar felonious assaults or terrorist threats[.]" (*Id.* ¶ 69; *see also id.* ¶¶ 18, 76 (alleging that Defendants did not respond to other Cloverdale and Sonoma County citizens who were crime victims with a cover up and refusal to prosecute). This allegation is enough to identify similarly situated individuals for the purposes of Section 1915 review. Any argument that the Ninth Circuit does not countenance class-of-one discrimination claims in the context of discretionary police investigation and charging decisions, *see Long v. Cnty. of Fresno*, No. 1:13-cv-01810-AWI-SKO, 2014 WL 3689694, at *6 (E.D. Cal. July 14, 2014) (collecting cases finding that police discretionary decisions cannot be challenged in a class-of-one equal protection claim), is better suited for resolution once the SAC has been served and the issue fully briefed by both parties.

With respect to Plaintiff's alleged due process violation, it may proceed given the concurrent failure to protect against discrimination.[1] *See Sexual Sin De Un Abdul Blue v. City of Los Angeles*, No. CV 09-7573-PA (JEM), 2010 WL 890172, at *6 (C.D. Cal. Mar. 8, 2010) (noting that ordinarily "an inadequate investigation by police officers is not sufficient to state a § 1983 claim unless another recognized constitutional right is involved, such as failure to protect

[1] While Plaintiff urges that he has also alleged a due process violation based on destruction of evidence and witness tampering, citing *Hampton v. Hanrahan*, 600 F.2d 600 (7th Cir. 1979), this right pertains to that of the defendant in a criminal case subject to prosecution, not the complaining witness. *Id.* at 628.

against discrimination").

III. Counts Two through Four: Conspiracy to Violate Civil Rights in Violation of Section 1985(1), (2), and (3)

The second through fourth causes of action allege that Chief Tuma, Sergeant King, and Officers Campbell and Rose conspired to violate Plaintiff's civil rights in violation of the three-subsections of Section 1985. Because Section 1985 is not a stand-along substantive right and instead "provides remedial relief only after a violation of a specifically defined and designated federal right is first established[,]" *Harmon v. City of Fresno*, No. CV F 08-1311 LJO GSA, 2008 WL 4690897, at *9 (E.D. Cal. Oct. 21, 2008), the Court previously dismissed Plaintiff's Section 1985 claims for failure to state a plausible claim that Defendants violated any of his constitutional rights. However, as set forth above, Plaintiff's SAC sufficiently alleges a violation of Plaintiff's Fourteenth Amendment rights, so this particular defect has been cured for the purposes of Section 1915 review.

Although Plaintiff brings three separate Section 1985 counts under the three subsections of the law, the substance of each claim is nearly identical. The gravamen of the conspiracy claims is that Defendants conspired to not press charges against Roux and Elbeck, intimidated and failed to protect witnesses, omitted information from the police report associated with the investigation into Roux and Elbeck, then refused to give a copy of that report to Plaintiff . (Dkt. No. 14 ¶¶ 100, 127, 154.) In addition, in all three claims Plaintiff alleges that Defendants' conspiracy was intended "to frustrate Plaintiff's ability to bring a civil action against Roux and Elbeck," knowing that "it would be far easier for [Plaintiff] to prevail in a civil action against them" if criminal charges were brought and "to cover this entire matter up and prevent [Plaintiff] from bringing a federal civil rights action against Chief Tuma, Sergeant King, Officer Campbell, Officer Rose, and the Cloverdale Police Department." (*Id.* ¶¶ 105-106, 130-131, 137-138.) Although the substance is identical, the elements and standards of each type of Section 1985 differ.

A. Count Two: Section 1985(1)

Plaintiff's second count is under Section 1985(1), which prohibits "two or more persons in any State or Territory" from "conspir[ing] to prevent, by force, intimidation, or threat, any person

from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof[.]" Section 1985(1) affords protection only to federal officers and prospective federal officers. *Canlis v. San Joaquin Sheriff's Posse Comitatus*, 641 F.2d 711, 717 (9th Cir. 1981), *cert. denied*, 454 U.S. 967 (1981). Plaintiff nowhere alleges that he is a federal officer; thus, he cannot claim protection under this statute. *See, e.g.*, *Gozzi v. Cnty. of Monterey*, No. 5:14-CV-03297-LHK, 2014 WL 6977632, at *10 (N.D. Cal. Dec. 10, 20124); *Shoftner v. U.S. Dep't of Agric.*, No. CV F 12-0062 LJO JLT, 2012 WL 4662340, at *6 (E.D. Cal. Oct. 1, 2012); *Lukenbill v. Dep't of U.S. Air Force*, No. CV F 10-1003 LJO SKO, 2010 WL 3717297, at *7 (E.D. Cal. Sept. 16, 2010). Accordingly, Plaintiff's Section 1985(1) claim is dismissed with prejudice.

B. Count Three: Section 1985(2)

Section 1985(2) allows a person to file a lawsuit where "two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws[.]" As the Court discussed in its Order dismissing the initial complaint, the first clause pertains to access to state courts, whereas the second pertains to federal courts. *See Mancini I*, 2015 WL 3993216, at *4 (citation omitted); *see Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 909 (9th Cir. 1993).

Here, it appears that Plaintiff is proceeding with both prongs, as he alleges that the end-goal of the conspiracy was to prevent him from bringing a civil action against Roux and Elbeck (presumably, the state-law common law tort action) as well as a federal civil rights case against the officers. However, the state-court prong of Section 1985(2) requires a plaintiff to plead class-based animus. *Evans v. McKay*, 869 F.2d 1341, 1345 n.3 (9th Cir. 1989). Here, Plaintiff has alleged that he is a "class of one"—*i.e.*, that the officers intentionally treated him differently due to personal animus without any rational basis. *See Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). As it is not settled whether a Section 1985(2) state-court claim can be premised on a class-of-one theory, this question is better suited to resolution after full briefing. Accordingly, this claim may proceed to service.

The other prong proscribes conspiracies that interfere with "federal judicial proceedings." *Kush v. Rutledge*, 460 U.S. 719, 724 (1983). No class-based animus is required. A plaintiff can plead a claim for conspiracy to deny access to federal court by showing the following: (1) a conspiracy by the defendants; (2) to deter, by force, intimidate, or threat, any party or witness from attending a court of the United States or testifying in a matter pending therein "freely, fully, and truthfully" or to injure a party or witness in his or her person or property on account of so attending or testifying; and (3) injury or damages to the plaintiff. *Portman*, 995 F. 2d at 909; *see also David v. United States*, 820 F.3d 1038, 1040 & n.3 (9th Cir. 1987). But the plaintiff must allege that there were some federal proceedings pending when the purported interference occurred. *See* 42 U.S.C. § 1985(2) (prohibiting conspiracy to deter any party or witness in federal court from attending or testifying "to any matter *pending* therein"). No such proceedings are alleged in the SAC; instead, Plaintiff's claims allege that Defendants' conspiracy sought to prevent him from bringing a federal suit in the first instance. Accordingly, Plaintiff's state-court Section 1985(2) claim passes muster under Section 1915 and may proceed to service, but his federal-court Section 1985(2) claim does not and therefore is dismissed.

C. Count Four: Section 1985(3)

Count Four alleges conspiracy to violate civil rights in violation of Section 1985(3). Section 1985(3) "was enacted by the Reconstruction Congress to protect individuals—primarily blacks—from conspiracies to deprive them of their legally protected rights." *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). To state a claim under Section 1985(3), a plaintiff must allege "(1) that some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action, . . . and (2) that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment." *Butler v. Elle*, 281 F.3d 1014, 1028 (9th Cir. 2002) (citations omitted); *see also Griffen v. Breckenridge*, 403 U.S. 88, 102 (1971) (plaintiff must allege "some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirator's action"). The Ninth Circuit requires "either that the courts have designated the class in question a suspect or quasi-suspect classification requiring more exacting scrutiny or that Congress has indicated through legislation

that the class required special protection." *Schultz v. Sundberg*, 759 F.2d 714, 718 (9th Cir. 1985). The Ninth Circuit has recognized that Supreme Court jurisprudence requires "lower courts to exercise restrained in extending [Section] 1985(3) beyond racial prejudice." *Butler*, 281 F.3d at 1028 (citation omitted). As a result, district courts have rejected Section 1985(3) claims premised on class-of-one discrimination due to personal animus. *See, e.g.*, *Cobb v. Adams*, No. C 13-04917 JSW, 2014 WL 2212162, at *5 (N.D. Cal. May 28, 2014) (citation omitted); *Kolstad v. Cnty. of Amador*, No. CIV 2:13-01279 WBS EFB, 2013 WL 6065315, at *9 n. 6 (E.D. Cal. Nov. 14, 2013). Here, Plaintiff's Section 1985(3) claim is based solely on class-of-one discrimination. He does not allege membership in any other suspect or quasi-suspect class. Accordingly, the SAC fails to plead a plausible Section 1985(3) claim, and Count Four is therefore dismissed with prejudice. *See Cobb*, 2014 WL 2212162, at *5; *Kolstad*, 2013 WL 6065315, at *9 n.6.

III. Count Five: Municipal Liability

Plaintiff now brings a Section 1983 municipal liability claim against the City of Cloverdale under *Monell v. New York Department of Social Services*, 436 U.S. 658 (1978). Municipalities may be held liable as "persons" under 42 U.S.C. § 1983, but not for the unconstitutional acts of their employees based solely on respondeat superior. *Id.* at 691. Instead, a plaintiff seeking to impose liability on a municipality under Section 1983 must "identify a municipal 'policy' or 'custom' that caused the plaintiff's injury." *Johnson v. Shasta Cnty.*, --- F. Supp. 3d ----, No. 2:14-cv-01338-KJM, EFB, 2015 WL 75245, at *9 (E.D. Cal. Jan. 6, 2015) (citations omitted). Thus, to state a claim under Section 1983, a plaintiff must allege: (1) that the plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving force behind the violation. *Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). A *Monell* claim can take one of three forms: "(1) when official policies or established customs inflict a constitutional injury; (2) when omissions or failures to act amount to a local government policy of 'deliberate indifference' to constitutional rights; or (3) when a local government official with final policy-making authority ratifies a subordinate's unconstitutional conduct." *Brown v. Contra Costa Cnty.*, No. C 12-1923 PJH, 2014 WL 1347680,

at *8 (N.D. Cal. Apr. 3, 2014) (citing *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249-50 (9th Cir. 2010)).

In addressing Plaintiff's FAC, the Court noted that Plaintiff did not bring a municipal liability claim but included certain allegations that implied he attempted to do so. *See Mancini II*, 2015 WL 4512274, at *6. In any event, the Court noted that such claim would fail for two reasons: because the FAC (1) did not allege any underlying constitutional violation and (2) failed to identify the custom, policy, or practice of the city that led to the violations. *Id.* Plaintiff has now specifically includes a municipal liability count and alleges facts to support both prior defects.

First, as discussed above, the SAC alleges facts sufficient to state a plausible claim that Defendants violated Plaintiff's Fourteenth Amendment rights, at least for the purposes of Section 1915 review. Thus, the constitutional violation predicate element is sufficiently pled. *See Doe v. Maher*, 795 F.2d 787, 790 (9th Cir. 1987) (noting that an "independent constitutional basis is necessary for a valid cause of action under section 1983") (citations omitted).

With respect to the custom, policy or practice element, in the SAC Plaintiff alleges that officers' unconstitutional conduct occurred as a result of a number of Cloverdale Police Department Policies, including: failure to use appropriate and generally accepted law enforcement procedures in handling criminal investigations; failure to institute, require, and enforce proper and adequate training, supervision, policies, and procedures concerning handling criminal investigations; a policy or practice of covering up violations of constitutional rights by failing to investigate complaints of unlawful assault, failing to investigate or discipline unconstitutional or unlawful police activity, and encouraging officers to file false reports, intimidate and coach witnesses, obstructing investigations, engage in nepotism and corruption; encouraging a "code of silence" whereby officers will not provide adverse information against another; insufficient handling of complaints of officer misconduct; and failure to train, supervise, or discipline officers. (Dkt. No. 14 ¶¶ 170, 171.) Plaintiff also alleges that the Police Department and its policy-making officials, including Chief Tuma and Sergeant King, ratified the officers' unconstitutional conduct. (*Id.* ¶ 172.)

Without more, not all of these are adequately pleaded theories of municipal liability. For example, to the extent that the SAC asserts a claim of municipal liability based on the city's failure to train its employees, Plaintiff "must allege facts showing a pattern and practice of 'deliberate indifference' to violations of constitutional rights." *Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011). Thus, where, as here, the pleadings only recount alleged constitutional violations against the plaintiff, there is no cognizable *Monell* claim. *See, e.g.*, *Cannon v. City of Petaluma*, No. C 11-0651 PJH, 2012 WL 1183732, at *19 (N.D. Cal. Apr. 6, 2012) ("[Plaintiff's] allegations in the SAC relate solely to his own, isolated experiences, which cannot support a *Monell* claim for failure to train or supervise."). However, the allegations that the officers acted pursuant to a particular, identified policy—*e.g.*, of nepotism, obstructing witnesses, covering up investigations due to corruption—are enough to eke out a claim against the City. *See AE ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012) (noting that the plaintiff must identify the policy or practice in the complaint to state a plausible claim). Because at least some portion of Plaintiff's municipal liability claim is adequately pleaded for the purposes of Section 1915 review, this count should proceed to service on the City of Cloverdale.

CONCLUSION

For the reasons explained above, the SAC appears to state a claim upon which relief can be granted as to at least some causes of action, and therefore passes Section 1915 review. Counts Two and Four, which allege violation of Section 1985(1) and (3), respectively, are dismissed with prejudice. Count Three, which alleges violation of Section 1985(2), may only proceed on the grounds of interference with access to state court. The Clerk of Court shall issue the summons. Further, the U.S. Marshal for the Northern District of California shall serve, without prepayment of fees, a copy of the SAC, any amendments or attachments, and this Order upon Defendants. The Court's decision to allow the SAC to proceed to service is without prejudice to Defendants moving to dismiss the claims on any ground.

IT IS SO ORDERED.

Dated: August 18, 2015

JACQUELINE SCOTT CORLEY
United States Magistrate Judge